Supreme Court, U.S.
FILED
APR 28 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1608

In The

Supreme Court of the United States

October Term, 1988

—o—

CEDAR CREST NO. 10, INC.,

Petitioner,

v.

THE CITY OF DALLAS,

Respondent.

—o—

On Writ of Certiorari to the Supreme Court of Texas

—o—

RESPONDENT'S BRIEF IN OPPOSITION

—o—

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Attorneys for Respondent

QUESTIONS PRESENTED

1. Whether Chapter 27 of the Dallas City Code may constitutionally fail to provide a judicial determination of nuisance prior to demolition of a structure.

2. Whether Section 27-9(e) of the Dallas City Code may constitutionally provide for a substantial evidence review to the district court from the Urban Rehabilitation Standards Board's determination of nuisance.

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CEDAR CREST NO. 10, INC.,
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RESPONDENT'S BRIEF IN OPPOSITION

The City of Dallas, Texas, Respondent, respectfully urges this Court to deny the Petition for Writ of Certiorari to review the decision of the Court of Appeals for the Eleventh Supreme Judicial District of Texas in this case.

OPINIONS BELOW

Respondent City of Dallas offers the following correction of Petitioner's statement of the opinions below.

The decision reported as *Cedar Crest Heights No. 10, Inc. v. The City of Dallas,* 754 S.W. 2d 351 (Tex.App—Eastland 1988, writ den'd), is the decision of the Court of Appeals for the Eleventh Supreme Judicial District of Texas.

———o———

COUNTERSTATEMENT OF THE CASE

1. On or about October 6, 1981 and December 1, 1981, the Urban Rehabilitation Standards Board for the City of Dallas, Texas determined that the property located at 1168 Diceman Avenue, and owned by Cedar Crest Heights No. 10, Inc. was an urban nuisance and ordered demolition. Demolition of the structure has not occurred.

2. Cedar Crest Heights No. 10, Inc., by petition filed in the district court on December 28, 1981, sought a substantial evidence review of the Urban Rehabilitation Standards Board's decision. Petitioner also claimed that the Board's decision denied it due process of law because it did not receive notice reasonably calculated to apprise it of the action and the opportunity to be heard. Further, it contended that the Dallas City Code, Chapter 27 was unconstitutional in that it did not require notice to the actual owner of the property. Res.App. 4. Petitioner pled in the alternative that it was entitled to a judicial determination of nuisance, but did not challenge that the failure to provide such a judicial determination of nuisance was a violation of due process. Res.App. 4-5.

Both parties filed motions for summary judgment and upon hearing the district court entered an order of partial

summary judgment finding that the correct standard of review of a decision of the Urban Rehabilitation Standards Board of the City of Dallas was the substantial evidence rule. Judgment was entered by the state district court on April 3, 1987. Res.App. 25-26. The judgment found that the decision of the City Board was supported by substantial evidence. Res.App. 25. The court further found that the Urban Rehabilitation Standards Board's record was filed with the court on October 1, 1986. Res.App. 25. Following the entry of judgment, Petitioner made no request for findings of fact and conclusions of law.

3. Petitioner alleged that Chapter 27 of the Dallas City Code was unconstitutional because it fails to provide for a judicial determination of nuisance prior to demolition for the first time in Plaintiff's Motion for Summary Judgment. Res.App. 23. The issue was not properly raised in the state district court because there were no pleadings to support the motion.

4. The Court of Appeals for the Eleventh Supreme Judicial District of Texas affirmed the judgment of the trial court.

a. The court held that neither the United States nor the Texas Constitution required a judicial determination of nuisance before demolition of the structure. The court found that Chapter 27 of the Dallas City Code provided for notices, hearings and an opportunity for compliance. The court further found that Chapter 27 of the Dallas City Code provided for the availability of a judicial determination of nuisance by providing an appeal to the district court.

b. The court also rejected Cedar Crest's argument that the use of the substantial evidence rule was an improper standard for review because it prevented a judicial determination of nuisance. The court found instead that Dallas had properly provided for a substantial evidence review pursuant to Section 27-9(e) of the Dallas City Code.

———o———

REASONS FOR DENYING THE PETITION

1. Petitioner has failed to bring forward to the Supreme Court a factual record for review. By failing to request findings of fact and conclusions of law in the district court and failing to include the evidence and testimony received by the Urban Rehabilitation Standards Board in the appellate record, Petitioner has failed to present an adequate record to show error. Where findings of fact and conclusions of law are not properly requested and none are filed, it is presumed on appeal that all disputed fact issues found by the trial court supported the judgment and the judgment of the trial court must be affirmed if it can be upheld on any legal theory. *In the Interest of W.E.R.,* 669 S.W.2d 716 (Tex. 1984); *Lassiter v. Bliss,* 559 S.W.2d 353 (Tex. 1977).

Petitioner also failed to include in the appellate record the facts considered by the City Board or the state district court. In the absence of sufficient facts brought forward to the appellate courts, the Court must presume that there was evidence to support the judgment of the trial court. *Brockett v. Sosa,* 675 S.W.2d 807 (Tex.App.—Corpus Christi 1984, no writ). Statements in a brief which

attempt to paraphrase the testimony presumably relied upon by the trial court cannot be considered. *Id.*

2. Petitioner has challenged as a violation of due process the administrative procedure used by the City of Dallas to determine that property is a nuisance and therefore subject to demolition. Sections 27-6 through 27-9 of the Dallas City Code set forth the provisions for the establishment of the Board and hearings before the Board for the purpose of determining whether property constitutes an urban nuisance. Pet. App. C-7 - C-16. Chapter 27 also provides for notice of the hearing and for the opportunity to present evidence and cross-examine witnesses. Pet. App. C-14 - C-15, C-26 - C-32. The statutory composition of the Board includes individuals with particular expertise in areas as varied as home building and social work.[1] A determination of nuisance before a state district court is provided by allowing a substantial evidence review of the City Board's decision.

The procedure to be used by the Board to conduct hearings to consider demolition of a structure is outlined

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[1] It is mandatory that the Board contain a registered architect who has had at least 10 years experience in the construction of buildings and housing, a physician who is licensed to practice medicine in the state and has actively been engaged in practice for at least 10 years, a mortgage loan banker who has been engaged in mortgage loan banking for at least 10 years, a home builder who has at least 10 years experience in the construction of homes, a licensed real estate broker who has at least 10 years experience in the appraisal of real estate, a person engaged in social or welfare work and having at least 10 years experience in public or private case work, an ordained minister who has at least 10 years experience in the clergy, a structural engineer who has at least 10 years experience in the construction of commercial buildings, and 11 members chosen on the basis of their interest in community affairs. Pet.App. C-7 - C-9.

in detail in Chapter 27. Initially, before an individual may be cited for a violation of Chapter 27, he must be given notice of the violation and a reasonable time for compliance. Pet. App. C-16. Any structure may be considered for demolition if it is not maintained in compliance with the minimum standards of Section 27-11 and if the structure is an urban nuisance. Pet. App. C-26. The administrator for the Board is required to give notice of the hearing to consider demolition to the owner or owners, lessor, occupant and any lienholder. Pet. App. C-26. A hearing to consider demolition can only be given after notice. Pet. App. C-26. Any interested person, including the owner, lessor, occupant and lienholder may present evidence on relevant issues. Pet. App. C-27. After the presentation of evidence, the Board may find that the property is not an urban nuisance, grant a variance to avoid the imposition of unreasonable hardship, grant an exception to avoid unreasonable hardship or find that it is a nuisance and order demolition or provide the opportunity to repair within a specified time. Pet. App. C-27 - C-28. After the hearing, the administrator must give notice of demolition if the Board orders demolition. Pet. App. C-29.

Finally, the stated purpose of Chapter 27 and the legislative findings of fact contained therein belie Petitioner's assertion that Chapter 27 seeks to enforce aesthetic standards. Instead, the definition of urban nuisance provided in Section 27-3(23) addresses the dangerousness of the structure and the violations of specified property, structural, utility and health standards. Pet.App. C-42 - C-43, C-56 - C-63. Chapter 27 has vested the Urban Re-

habilitation Standards Board with judicial and quasi-judicial powers and affords to the participants in such hearings the right to notice and an adequate opportunity to be heard.

3. Petitioner attacks the constitutionality of Chapter 27, contending that it fails to provide for a prior judicial determination of the nuisance issue. Petitioner fails to show either that judicial determination of nuisance was denied or that a prior determination of nuisance is required. In *Jones v. City of Odessa*, 574 S.W.2d 850 (Tex.Civ.App.-El Paso 1978, no writ), the court addressed the constitutional issues both as to the state and federal constitutions. The *Jones* court held that:

> We hold that the State Constitution does not require that a judicial determination precede demolition of property subsequently found to be a nuisance so as to make the city absolutely liable without regard to a subsequent judicial determination that the property was in fact a nuisance.

Id. at 853. The same holding was made as to the federal constitution. *Id.* The holding in *Jones* was followed in *Pratt v. City of Denton*, 670 S.W. 2d 786 (Tex. App.-Fort Worth 1984, no writ). After discussing the holding in *Jones*, the court in *Pratt* stated:

> We agree with the El Paso court, and hold that Texas law does not require a judicial determination of nuisance before a City may demolish property.

Pratt v. City of Denton, supra at 789.

The Fifth Circuit has also held that the federal constitutional guarantee of due process does not require a

judicial determination of nuisance prior to demolition. *Traylor v. City of Amarillo*, 492 F.2d 1156 (5th Cir. 1974). Specifically referring to *Crossman v. City of Galveston*, 247 S.W. 810 (1923), the court in *Traylor* found that *Crossman* was decided at a time when the constitutional basis for regulatory powers was more primative and that there was no federal constitutional requirement of a prior determination of nuisance. *Id.* at 1158. The court in *Traylor* further found that the procedural safeguards in the notices, opportunity for hearing and opportunity for compliance provided by the Amarillo ordinances were adequate under the federal constitution. *Id.* at 1158-1159. Equivalent procedural safeguards are provided in Chapter 27.

4. Petitioner presents as its second question the constitutionality of the provision in Chapter 27 for a substantial evidence review of the decision of the Urban Rehabilitation Standards Board's determination of nuisance. Petitioner concedes that Chapter 27 affords the procedural safeguards required by due process, (Petition for Writ of Certiorari, p. 16) and that an administrative board can be the tribunal before which the hearing is held (Petition for Writ of Certiorari, p. 14-15). Petitioner attempts to criticize the procedures as applied rather than the procedures provided. A consideration of Petitioner's challenge to the procedures as applied would require either a review of the record made by the Urban Rehabilitation Standards

Board or findings of fact and conclusions of law, neither of which Petitioner has included in the appellate record.

Petitioner asserts that although Section 27-9(e) of the Dallas City Code purports to limit the judicial review of the Board's decision to the substantial evidence rule, it must be afforded an opportunity to litigate the issues de novo. Petitioner relies primarily on *City of Houston v. Lurie,* 224 S.W.2d 871 (Tex. 1949), in support of its contention that the substantial evidence rule does not apply. The *Lurie* case does not support that contention.

The City of Houston argued in *Lurie* that the review of the court should be limited to a substantial evidence review. The court held that the substantial evidence rule was not applicable because neither the city ordinance nor the state statute had provided for the application of the substantial evidence rule. *Id.* at 874. The *Lurie* court finds however that by proper legislation the city could limit the review to the substantial evidence rule. *Id.*

A home rule city, such as the City of Dallas, has the full power of self government, that is the full authority to do anything the Legislature is authorized to do. *Burch v. the City of San Antonio.* 518 S.W.2d 540 (Tex.1975); *City of Corpus Christi v. Continental Bus Systems, Inc.,* 445 S.W.2d 12 (Tex.Civ.App.-Austin 1969, writ ref'd n.r.e.). Therefore, home rule cities look to the legislature not for grants of power but only for limitations of power. *Id.*

Article 1175, Tex.Rev.Civ.Stat.Ann. (Vernon 1984), delineates certain of the powers of a home rule city. Subdivision 36 of Article 1175 was added in 1979 and clearly outlines a home rule cities powers regarding nuisances. Subdivision 36 provides:

> A home rule city may adopt an ordinance which requires the demolition or repair of buildings which are dilapidated, substandard, or unfit for human habitation in which constitute a hazard to the health, safety, and welfare of the citizens. The ordinance must establish minimum standards for continued use and occupancy of structures, and these standards shall apply to buildings regardless of when they were constructed. The ordinance must provide for proper notice to the owner and a public hearing. After the hearing, if the building is found to be substandard, the city may direct that the building be repaired or removed within a reasonable time. After the expiration of the allotted time the city has the power to remove the building at the expense of the city and assess the expenses on the land on which the building stood or to which it was attached and may provide for that assessment, the mode and manner of giving notice, and the means of recovering the removal expenses.

There is no allegation in this case that the City of Dallas failed to adopt an ordinance which complies with subdivision 36. Further, there is little doubt, after the enactment of subdivision 36, that a home rule city has broad powers to hold hearings and issue orders regarding the demolition of nuisances within its jurisdiction.

Administrative agencies, such as the Urban Rehabilitations Standards Board, have powers which are judicial or quasi-judicial in nature. *Key Western Life Insurance Co. v. State Board of Insurance,* 350 S.W.2d 839 (Tex. 1961); *Kost v. Texas Real Estate Commission,* 359 S.W.2d 306 (Tex.Civ.App. - Texarkana 1962 writ ref'd). In the *Key Western* case, the Supreme Court of Texas defined the nature of a judicial determination or inquiry, quoting from this Court, as follows:

> A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. . . . *Prentis v. Atlantic Coastline,* 211 U.S. 210, 29 S.Ct. 67, 69, 53 L.ED. 150.

Key Western Life Insurance Co. v. State Board of Insurance, supra at 847. It is clearly illustrated by the court in the *Key Western* case that a judicial determination or "judicial inquiry" need not be made by a court. Instead, it is acceptable for an administrative agency to make judicial determinations and exercise judicial powers.

Additionally, a municipal ordinance is presumed valid. *City of Fort Worth v. Johnson,* 388 S.W.2d 400 (Tex. 1964); *Town of Renner v. Wiley,* 458 S.W.2d 516 (Tex. Civ. App.-Dallas 1970 no writ). An extraordinary burden rests on one challenging an ordinance to show that no conclusive or even controversial, debatable, or issuable facts or conditions exist to support the validity. *Id.* It is this extraordinary burden which Petitioner must satisfy in order to challenge the City of Dallas' provision that the substantial evidence rule applies to appeals from the Urban Rehabilitation Standards Board. Petitioner presents inadequate justification for invalidating Section 27-9(e).

———o———

CONCLUSION

The Petition for Writ of Certiorari fails to present to the Supreme Court a factual record to review and raises no substantial constitutional issue and should be summarily denied by the Court.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DALLAS, TEXAS

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April 28, 1989

APPENDIX

NO. 81-14621-I

CEDAR CREST NO. 10, INC.,	)	
Plaintiff,	)	IN THE DISTRICT COURT OF DALLAS
vs.	)	COUNTY, TEXAS
CITY OF DALLAS, TEXAS,	)	I-162nd JUDICIAL DISTRICT
Defendant.	)	

PLAINTIFF'S ORIGINAL PETITION

(Filed December 28, 1981)

TO THE HONORABLE JUDGE OF SAID COURT:

CEDAR CREST NO. 10, INC., Plaintiff, files this Original Petition, complaining of the City of Dallas, Texas, hereafter referred to as "City", and for cause of action would show the Court the following:

1.

Plaintiff is a Texas Corporation having its principal place of business in Dallas County, Texas.

2.

The Defendant, City of Dallas, is a municipal corporation duly organized under the home rule amendment to the constitution of the State of Texas (Const. Art. XI, Sec. 5) and its enabling act (R.S. Art. 1165) located in the County of Dallas, Texas. Services may be had upon the City Secretary at the City Hall, in Dallas, Texas.

3.

The Urban Rehabilitation Standards Board is an administrative agency of the City of Dallas, established pursuant to the City Code of Dallas, Texas, Chapter 27, Article II, Sec. 27-4. The actions of the Defendant City complained of herein were and are being taken by and through its agency, Urban Rehabilitation Standards Board, hereinafter referred to as the "Board". Plaintiff seeks a review of a decision of such Agency, pursuant to Dallas City Code, ch. 27, art. II, Sec. 27-9.

4.

Plaintiff is, and at all pertinent times has been, the owner of the real estate and improvements thereon, located at 1168 Diceman, Dallas, Texas.

5.

On or about May 5, 1981, the City of Dallas, acting by and through the Board, issued a notice of violation of the Urban Rehabilitation Standards Ordinance to Albert R. Brydon, an employee of General Rental Company, the property manager for Plaintiff. Thereafter, on or about October 1, 1981, the Urban Rehabilitation Standards Board issued a Notice of Hearing to Cedar Crest Heights No. 9, Inc., c/o Albert Robert Brydon, General Rental Company, notifying him that the Board would have a hearing on Tuesday, October 6, 1981. A copy of said notice is attached hereto as Exhibit A and incorporated herein. Pursuant to said Notice, a hearing was had before the Urban Rehabilitation Standards Board on October 6, 1981. Appearances were made by the persons and parties notified, in opposition to the notice of violation. Thereafter, the Agency is-

sued its Notice of Demolition Order dated October 9, 1981 and mailed such order to Cedar Crest Heights No. 9 and William Woodburn, attorney, a copy of such notice is attached as Exhibit B. Such Notice of Demolition Order cited a right to an administrative hearing and review of the order, which Joe Bailey, d/b/a General Rental Company, exercised through his attorney, William Woodburn. The bases of the appeal were these:

1. The Order to Demolish did not conform with the true intent of the ordinance.
2. That the Order to Demolish was contrary to the law.
3. That the provisions of the Ordinance did not fully apply.
4. That because of unusual conditions, unnecessary hardship would result, and
5. The appellant requested the order to be modified to provide for repair within an appropriate time.

On December 1, 1981, a rehearing was held before the Board pursuant to notice, which resulted in a revision of the original order. The Board issued its final order, "Order Requiring Repair or Correction of an Urban Nuisance in a Specified Period of Time and Demolition of the Structure if the Repair or Correction was not Timely Effected" to Joe W. Bailey, Cedar Creek Heights, No. 10 and William Woodburn, its attorney. A copy of the final order is attached hereto as Exhibit C.

6.

All administrative remedies having been exhausted by those parties notified of the actions of the Urban Rehabili-

tation Standards Boards, and all conditions precedent having been performed or having incurred, Plaintiff, owner of the above mentioned property, is entitled to judicial review of the Agency's decision in accordance with Dallas, Texas, City Code ch. 27, art. II, Sec. 9.

7.

Plaintiff says that the Board's findings, conclusions and decisions are unlawful and improper because of one or more of the following:

1. The Board's decision is not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole. In this connection, Plaintiff says that the building located at the above-mentioned address is not an urban nuisance and the Board's finding is lacking in evidentiary support.
2. The Board's decision denies Plaintiff due process of law, as guaranteed by the Constitutions of the United States and the State of Texas, in that the Plaintiff did not receive notice reasonably calculated to apprise Plaintiff of the action and an opportunity to be heard.
3. The Board's decision exceeds the statutory authority.
4. The Board's decision is arbitrary and unreasonable.
5. The Dallas City Code Chapter 27 is unconstitutional in that it does not require notice upon the actual owner of the property. Specifically, Dallas, Tex. City Code Ch. 27, Art. 1 Sec. 3(12), defining owner, includes persons who are not the holder of the fee simple title.
6. Plaintiff, as owner of the subject property did not receive notice of the hearing on October 6, 1981.

7. The structure is not an urban nuisance.

8.

Plaintiff, in the alternative, is entitled to a judicial determination by a court of law as to whether the structure is a nuisance.

9.

The Plaintiff's above-described property has been burned by arsonists. Many other buildings in the area where the Plaintiff's property is situated have been burned by arsonists. The City of Dallas, through its police and fire departments are unable to apprehend the arsonists nor are they able to protect the buildings from being burned out. Insurance on the buildings is prohibitive because of the exorbitant premiums demanded by insurance companies to cover the risk in the subject area. Building contractors are reluctant to come in to do work in the area due to the danger to their employees, the damage to partly constructed buildings and the theft of materials. Plaintiff has cleaned up the debris and boarded the buildings above mentioned, sealing it from entry from unauthorized persons. The building remains unoccupied and safe from intruders. It does not create a nuisance in the area under the circumstances that prevail in that area and according to the standard in the area. The structure as it exists has substantial value, and when the crime of arson in the area is brought under control, or the City of Dallas can protect the property from such crime, then repairs will be justified. Until such time, the Plaintiff, owner, has satisfied the minimum standards and responsibilities of owners under Dallas, Texas City Code Ch. 27, Art. III, Sec. 11(6) by keeping the

doors and windows of the vacant structure securely closed to prevent unauthorized entry.

10.

Defendant, and its agents, threaten to, and unless restrained by this Court will demolish Plaintiff's structure and if Plaintiff is forced to demolish the structure or the defendant City demolishes the structure, Plaintiff will suffer irreparable injury to its vested property rights. If Plaintiff is required to repair the structure in accordance with the orders of the Board, such property is subject to being destroyed again by arsonists and Plaintiff will suffer irreparable injury to its vested property rights. In both instances Plaintiff is without an adequate remedy at law.

WHEREFORE, Plaintiff prays:

1. That the Court issue a Temporary Restraining Order prohibiting the defendant, its officers, agents and servants from demolishing the structure located at 1168 Diceman Avenue, Dallas, Texas, to preserve the status quo.

2. Defendant be cited to appear and show cause and that upon such hearing, a Temporary Injunction be issued, enjoining Defendant, his agents, servants, and employees, from directly or indirectly demolishing the building located at 1168 Diceman Avenue, Dallas, Texas.

3. A permanent injunction be ordered on final trial of this cause, enjoining Defendants, his agents, servants and employees, from directly or indirectly demolishing said building located at 1168 Diceman Avenue, Dallas, Texas.

4. That in due course a day be appointed for final hearing on the merits of this cause and, at the

conclusion thereof, an order be entered declaring the above provisions of the ordinance of the City of Dallas to be unconstitutional, illegal, null and void; and

5. That Plaintiff be granted its cost of suit and such other and further relief as may be just and proper.

/s/ William Woodburn
WILLIAM WOODBURN,
Attorney for Plaintiff
Bar No. 21929000

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Dallas, Texas 75206
(214) 692-8671

STATE OF TEXAS :
COUNTY OF DALLAS :

BEFORE ME, the undersigned Notary Public, on this day personally appeared William Woodburn, who being by me duly sworn on his oath deposed and said that he is the attorney for the Plaintiff in the above-entitled and numbered cause; that he has read the above and foregoing Plaintiff's Original Petition; and that every statement contained therein is within his personal knowledge and true and correct.

/s/ William Woodburn
WILLIAM WOODBURN

SUBSCRIBED AND SWORN TO BEFORE ME on this 22nd day of December, 1981, to certify which, witness my hand and seal of office.

/s/ Alice Perkin
Notary Public in and for
Dallas County, Texas

EXHIBIT A

Urban Rehabilitation Division 6CN City Hall, 1500 Marilla Street, Dallas, Texas 75201
Telephone (214) 670-3620

Cedar Crest Heights #9, Inc.
c/o Albert Robert Brydon
General Rental Company
2514 Birdsong #101
Dallas, TX 75203

Mr. Joe W. Bailey
3601 Turtle Creek Blvd.
Apt. 73
Dallas, TX 75219

CITY OF DALLAS
THE URBAN REHABILITATION STANDARDS BOARD

NOTICE of HEARING

To Consider an Order of Repair or Correction of a Potential Urban Nuisance

STATE OF TEXAS, COUNTY OF DALLAS—THE CITY OF DALLAS vs. CEDAR CREST HEIGHTS #9, INC.

The Administrator of Urban Rehabilitation has, previously, given notice of Violations of Chapter 27 of the Revised Code of Civil and Criminal Ordinances of the City of Dallas as found on premises and/or structures located on Lot(s) pt Tract 2 in Block 7530 official city numbers, in the City of Dallas, Dallas County, Texas, and more commonly known as 1168 Diceman Avenue.

After receipt of such written notice, persons responsible have either knowingly continued to violate provisions of

that Chapter, or have failed to do or to perform those acts necessary and required to repair or to correct such conditions, which failure may result in a determination that the structure is an urban nuisance and may be considered for demolition.

TAKE DUE NOTICE that pursuant to the requirements of Section 27-13 of the said Chapter a hearing to consider demolition of the potential Urban Nuisance at this location will be held before a hearing panel of the Urban Rehabilitation Standards Board in and for the City of Dallas, on Tuesday, October 6, 1981. The hearing will be held in the City Council Chamber of the Dallas City Hall, 6th Floor, 1500 Marilla Street, Dallas, Texas at 1:30 o'clock P.M. At this hearing the Administrator shall present evidence of the condition of the structure(s) and the owner, lessor, occupant or lienholder, or any interested person, may present evidence on relevant issues, may present witnesses in his own behalf, and is entitled to cross-examine any witness appearing against him. After hearing evidence from each interested person, the hearing panel may issue its findings and an appropriate order based upon its determinations, which may include (1) finding that the structure(s) is not an urban nuisance, and refer the matter to the administrator for further appropriate action; (2) granting of a variance in order to avoid imposition of an unreasonable hardship; (3) granting of an exception to any provision of this chapter to the owner-occupant of a single-family dwelling to avoid the imposition of an unreasonable hardship, where the health, safety, and welfare of other persons will not be affected; (4) finding that the structure is an urban nuisance and ordering repair or correction within a specified perior of time, and demolition

of the structure if the repair or correction is not timely effected; (5) a finding that the occupancy load of a structure should be reduced; (6) finding that an occupied structure should be vacated; (7) that a structure should be closed; (8) ordering that personalty be removed from a structure and stored; or (9) ordering that a structure be closed if it is found that the structure or a portion of the structure is open and potentially hazardous to the health, safety and welfare of the public.

Expenses of demolition, closure, vacation and removal, when accomplished by city forces or by a third party contract with the city, if not paid when due, shall constitute a lien against the real property on which the order is issued. Such lien runs with the land and is not affected by subsequent transfer of the property after the order is recorded in the Deed Records, as provided by law.

YOU ARE NOTIFIED TO APPEAR IN PERSON OR BY REPRESENTATIVE AT THE TIME ABOVE INDICATED.

EXHIBIT B

Cedar Crest Heights #9
2514 Birdsong #101
Dallas, Texas 75203

Joe W. Bailey
3601 Turtle Creek Blvd., Apt. 73
Dallas, Texas 75214

William Woodburn—514 Expwy.
Tower—Dallas, Texas 75206

CITY OF DALLAS

NOTICE OF DEMOLITION ORDER

NOTICE TO OWNERS AND OTHER INTERESTED PARTIES, AS PROVIDED BY LAWS OF THE CITY OF DALLAS

TO WHOM IT MAY CONCERN: Take due notice that an Order of Demolition, pursuant to provisions of Article IV, Section 27-13 (c)(4) of the Revised Code of Civil and Criminal Ordinances of the City of Dallas, Dallas County, Texas, has been issued, applicable to the structure(s) situated on the below described real property. The Urban Rehabilitation Standards Board in and for the City of Dallas, Dallas County, Texas, convened in regular session on October 6, 1981, having inspected the property in question, examined the facts in evidence and having heard testimony and evidence supplied by the Administrator and staff and after providing an opportunity for the owners or other parties at interest to present evidence on relevant issues, to present witnesses in his or their own behalf, and to cross examine any witness appearing against him or them, has, after due consideration, found and determined that there is situated on the below described property a structure or structures in violation of one or more of the minimum standards of Section 27-11 and which is an Urban Nuisance as defined in Section 27-1, Subsection (19)(a) or Subsection (19)(b) of the Revised Code of Civil and Criminal Ordinance of the City of Dallas, Texas.

* A TWO STORY FRAME FIRE DAMAGED 26 UNIT APARTMENT—

There being a quorum then present, upon motion made, seconded and duly passed, the Urban Rehabilitation Standards Board ordered the repair or correction of the Urban Nuisance situated in the City of Dallas, Dallas County, Texas, on Lot pt. tract 2 in Block 7530 Official City numbers, and also known as 1168 Diceman Avenue.* within a period of time not to exceed 60 days after date of issu-

ance of that order, subject to the express stipulation that the structure(s) at that location are ordered demolished if the repair or correction of that Urban Nuisance were not timely effected. This period of time having lapsed, and the person or persons responsible having failed to comply with the order to repair or correct this Urban Nuisance within the specified period of time, as provided in Section 27-13 (c)(4), the Administrator has caused this notice of demolition to issue and to be recorded in the deed records of Dallas County, Texas, as is made and provided by law in such cases. Subsection (g) of this Section 27-13 provides "When an order issued under Subsection (c)(4) has been filed in the deed records of Dallas County, execution of the order is not affected by a sale or other transfer of the premises. A person acquiring interest in property after an order has been so filed, is subject to the requirements of the order. The provisions of this subsection shall be included as a part of each order."

Demolition of this structure(s) may be accomplished by an owner as compliance with this section or by the city. The expense of demolition, when performed under contract with the city or by city forces, constitutes a lien against the real property on which a structure stood, and the lien runs with the land. The city may use lawful means to collect demolition costs from an owner, except forced sale of the land.

If you wish to exercise your right to an administrative rehearing and review of this demolition order, your attention is directed to the following provisions of Section 27-14, styled REHEARING OF DEMOLITION ORDERS, which provides in part "A hearing panel may grant one

rehearing if a person affected by an order and notice of demolition requests the rehearing within 10 days after notice of demolition is received . . . (and that) when a rehearing is granted, the Administrator shall stay all proceedings of demolition until conclusion of the rehearing. A rehearing fee of $40 shall accompany a request for a rehearing. A person may make a written affirmation of his inability to pay this fee, and the hearing panel may waive the fee. A decision of the hearing panel on the rehearing is final as to administrative remedies, unless the person affected obtains a rehearing under Section 27-14.2"

Your attention is further directed to provisions of Section 27-9 (e) which provide: "Once a decision of a hearing panel has become final under this section, Section 27-14, or 27-14.2 the person affected by an order may appeal the decision to the state district court. Appeal to the district count must be filed within 20 days from the date of receipt of (this) notice of an order of demolition given by the Administrator . . . Appeal in the district court shall be limited to a hearing under the substantial evidence rule."

The action of the Board upon which this Order is based is as recorded in the official Minutes of this Board, on file with the City Secretary, and in the offices of the Administrator. I certify that the facts as above set forth are true and correct.

Dated at Dallas, Texas October 9, 1981

/s/ D. H. Conner
Codes Compliance Administrator
6CN City Hall, 1500 Marilla St.
Dallas, Texas 75201
Telephone (214) 670-3620

STATE of TEXAS)

COUNTY of DALLAS)

Before me, the undersigned Authority, on this day personally appeared Douglas H. Conner, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he had executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

My Commission Expires October 21, 1981

/s/ Edna L. White
Notary Public in and for
Dallas County Texas

EXHIBIT C

URBAN REHABILITATION DIVISION, 6CN CITY HALL, 1500 MARILLA STREET, DALLAS, TEXAS 75201—Joe W. Bailey—3601 Turtle Creek Blvd., apt. 73—Dallas, Texas 75219—William Woodburn, Esq.—514 Expressway Tower—Dallas, Texas 75206

Cedar Creet Heights #10—c/o Albert Robert Brydon—2514 Birdsong—#191
Dallas, Texas 75203

CITY OF DALLAS

THE URBAN REHABILITATION STANDARDS BOARD

NOTICE TO OWNERS AND OTHER INTERESTED PARTIES, AS PROVIDED BY LAWS OF THE CITY OF DALLAS

ORDER REQUIRING REPAIR OR CORRECTION OF AN URBAN NUISANCE WITHIN A SPECIFIED PERIOD OF TIME
and
DEMOLITION OF THE STRUCTURE IF THE REPAIR OR CORRECTION IS NOT TIMELY EFFECTED

TO WHOM IT MAY CONCERN: Take due notice that the Urban Rehabilitation Standards Board in and for the City of Dallas, Dallas County, Texas, convened in regular session on December 1, 1981, having inspected the property in question, examined the facts in evidence and heard the testimony and evidence supplied by the Administrator and staff, concerning property situated in the City of Dallas, Dallas County, Texas, on Lot pt tr 2-96.22x235.76′ in Block 7530 Official City numbers, and also known as 1168 Diceman Avenue. A two story brick veneer multi family 26 unit apartment, fire damaged has, after due consideration, found and determined that there is situated on the said property a structure or structures which fails to comply with one or more of the minimum standards of Section 27-11 and which is an Urban Nuisance as defined in Section 27-3, Subsection (19)(A) or Subsection (19)(b), of the Revised Code of Civil and Criminal Ordinances of the City of Dallas, Texas.* BUILDING PERMIT BE FIRST OBTAINED WITHIN 10 DAYS WORK STARTED WITHIN 10. RESCIND DEMO ORDER+

There being a quorum then present, upon motion made, seconded and duly passed, the Urban Rehabilitation Standards Board has ordered the repair or correction of this Urban Nuisance within a period not to exceed *90 days after date of this order, subject to the express condition

that the structure(s) at this location are ordered demolished if the repair or correction of this Urban Nuisance is not timely effected, and this order if issued will be filed in the deed records of Dallas County, Texas. Demolition of a structure may be accomplished by an owner as compliance with this order or it may be accomplished by the city. The expense of demolition, when performed under contract by city forces or by an independent contractor, constitutes a lien against the real property on which a structure stood, and the city may use lawful means to collect demolition costs from an owner, except forced sale of the land.

This order is issued under provisions of Subsection (c)(4) of Section 27-13 of Chapter 27. Subsection (g) of that Section provides, in part "When an order issued under Subsection (c)(4) has been filed in the deed records of Dallas County, execution of the order is not affected by a sale or other transfer of the premises. A PERSON ACQUIRING INTEREST IN PROPERTY AFTER AN ORDER HAS BEEN SO FILED IS SUBJECT TO THE REQUIREMENTS OF THE ORDER. THE PROVISIONS OF THIS SUBSECTION SHALL BE INCLUDED AS A PART OF EACH ORDER.

I certify that this order is true and correct, and is as recorded in the official Minutes of this Board, as on file with the City Secretary, and in the offices of the Administrator, Urban Rehabilitation Division, Department of Housing and Urban Rehabilitation, 6CN City Hall, 1500 Marilla Street, Dallas, Texas 75201.

Dated at Dallas, Texas December 04 1981

/s/ Douglas H. Conner
Codes Compliance Administrator
6CN City Hall
1500 Marilla St.
Dallas, Texas 75201
Telephone (214) 670-3620

STATE of TEXAS)
COUNTY OF DALLAS)

Before me, the undersigned Authority, on this day personally appeared Douglas H. Conner known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he had executed the same for the purposes and considerations as therein expressed, and in the capacity therein stated.

/s/ Edna L. White
Notary Public in and for Dallas County, Texas

My commission expires October 21, 1985

ENDORSEMENT OF INSTRUMENT 81-14621-I

Cedar Crest No. 10, Inc.

Vs.

City of Dallas, Texas

PLAINTIFF'S ORIGINAL PETITION

Filed: December 28, 1981 BILL LONG, District Clerk
Dallas County, Texas s/s————Deputy

NO. 81-14621-I

CEDAR CREST HEIGHTS NO. 10, INC.	)	IN THE DISTRICT COURT
Plaintiff,	)	DALLAS COUNTY,
vs.	)	TEXAS
CITY OF DALLAS, TEXAS,	)	162ND JUDICIAL DISTRICT
Defendant.	)	

DEFENDANT'S FIRST AMENDED ORIGINAL ANSWER

(Filed October 14, 1982)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the CITY OF DALLAS, a municipal corporation, Defendant in the above styled and numbered cause, and in answer to Plaintiff's Original Petition on file herein would show the Court and the Jury the following:

I.

Defendant, CITY OF DALLAS, denies all the allegations contained in the Plaintiff's Original Petition and says that same are not true in whole or in part. Defendant further says that since Plaintiff has alleged all of these things, it should be required to prove each and everyone of these allegations to a jury by a preponderance of all the credible evidence.

II.

As provided by Section 27-9 of the Dallas City Code, appeal from a final decision of the Urban Rehabilitation Standards Board to the District Court is limited to a review by the substantial evidence rule. A substantial evidence review means that the Court may not overturn the Board's decision unless looking at the record as a whole, reasonable minds could not have reached the decision reached by the Board.

III.

The property in question located at 1168 Diceman, Dallas, Dallas County, Texas, constitutes, in fact and in law, a nuisance.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DALLAS, TEXAS
7 BN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201
670-3510

BY: /s/ Sally Jo Field
SALLY JO FIELD
Assistant City Attorney
State Bar Card #06961100

CERTIFICATE OF SERVICE

I do hereby certify that a true copy of the above and foregoing Defendant's First Amended Original Answer was served on Plaintiff's Attorney, William Woodburn, 514 Expressway Tower, 6116 North Central Expressway, Dallas, Texas, 75216, by depositing same in the United States Postal Service, postage prepaid, on this 14th day of October, A.D., 1982.

/s/ Sally Jo Field
SALLY JO FIELD

ENDORSEMENT OF INSTRUMENT 81-14621-I

Cedar Crest Heights, No. 10, Inc.

Vs.

City of Dallas, Texas

DEFENDANT'S FIRST AMENDED ANSWER

Filed: October 14, 1982 BILL LONG, District Clerk
Dallas County, Texas s/s .....Deputy

NO. 81-14621-I

CEDAR CREST HEIGHTS NO. 10, INC.	)	IN THE DISTRICT COURT
Plaintiff,	)	
vs.	)	DALLAS COUNTY, TEXAS
CITY OF DALLAS, TEXAS,	)	162ND JUDICIAL DISTRICT
Defendant.	)	

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

(Filed March 15, 1985)

COMES NOW Cedar Crest Heights #10, Inc., Plaintiff, and files this Motion for Summary Judgment pursuant to TEX. R. CIV. P. 166A, and in support thereof would show as follows:

I.

There is no genuine issue as to any material fact and Plaintiff is entitled to judgment against the Defendant as a matter of law.

II.

This Motion for Summary Judgment is based upon the record in this case, including the pleadings on file in this cause and the certified copy of Chapter 27 of the Dallas City Code filed herein.

III.

Plaintiff would show that Chapter 27 of the Dallas City Code is unconstitutional because it fails to provide for a judicial determination of whether Plaintiff's building constitutes a nuisance. In this connection, Plaintiff would show that Section 27-13(c) of the Dallas City Code provides that the Urban Rehabilitation Standards Board shall have the authority to find that a structure is an urban nuisance and order remedial action, including demolition. The failure of Chapter 27 to provide for a judicial determination of this issue constitutes a denial of due process, and Plaintiff is entitled to a permanent injunction preventing the City from demolishing the building located at 1168 Diceman Avenue, Dallas, Texas.

IV.

Alternatively, Plaintiff would show that it is entitled to an independent determination by a court of law as to whether this building constitutes a nuisance. Despite the City's attempt to restrict judicial review under the substantial evidence rule, Plaintiff is entitled to a trial de novo on the issues presented in this case.

WHEREFORE, Plaintiff requests that the matter be set for a hearing with notice to the Defendant, and that following such hearing the Court grant Plaintiff's Motion for Summary Judgment and permanently enjoin the City of Dallas from demolishing the building located at 1168 Diceman Avenue, Dallas, Texas. Alternatively, Plaintiff requests that the Court order a trial de novo on the issue of whether Plaintiff's building constitutes a nuisance.

Plaintiff further prays for such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ William Woodburn
William Woodburn
State Bar No. 21929000

WOODBURN & SULLIVAN
4411 North Central Expressway
Suite 220
Dallas, Texas 75205
(214) 528-9560
Attorneys for Plaintiff

FIAT

The above and foregoing Plaintiff's Motion for Summary Judgment is hereby set for a hearing on the 19th day of April, 1985 at 8:30 o'clock a.m. in the courtroom of the 162nd Judicial District Court, Dallas County Courthouse, Dallas, Texas.

/s/ Catherine J. Crier
JUDGE PRESIDING

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Plaintiff's Motion for Summary Judgment has been sent certified mail, return receipt requested, to Ms. Sally Jo Field, Assistant City Attorney, Dallas City Hall 7BN, 1500 Marilla Street, Dallas, Texas 75201 on this 15th day of March, 1985.

/s/ Jeff Kaplan
Jeff Kaplan

ENDORSEMENT OF INSTRUMENT 84-14621-I

Cedar Crest Heights No. 10, Inc.

Vs.

City of Dallas, Texas

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Filed: March 15, 1985
Dallas County, Texas

BILL LONG, District Clerk
s/s Rosie Jackson, Deputy

NO. 81-14621-I

CEDAR CREST HEIGHTS NO. 10, INC.	)	IN THE DISTRICT COURT
vs.	)	DALLAS COUNTY, TEXAS
CITY OF DALLAS, TEXAS,	)	162ND JUDICIAL DISTRICT

JUDGMENT

On the 23rd day of October, 1986 the parties appeared by and through their respective counsel of record and announced ready. On the 13th day of September, 1985 the court entered Partial Summary Judgment finding that the standard of review for a decision of the Urban Rehabilitation Standards Board of the City of Dallas in this cause was the substantial evidence rule. The Urban Rehabilitation Standards Board's record was filed with the Court on October 1, 1986. The Court, having reviewed the record pursuant to the substantial evidence rule and heard and considered arguments and briefs of counsel, finds that the decision of the Urban Rehabilitation Standards Board relating to Cedar Crest Heights No. 10 is supported by substantial evidence and therefore should be affirmed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff take nothing by reason of its cause of action herein, and that the Orders of the Urban Rehabilitation Standards Board relating to Cedar

Crest Heights No. 10 made on October 6, 1981 and December 1, 1981 are affirmed.

It is FURTHER ORDERED that all costs of court incurred herein be taxed against the the Plaintiff for which let execution issue if not timely paid.

It is FURTHER ORDERED that all relief not specifically granted herein is hereby denied.

SIGNED this 3rd day of April, 1987.

/s/ Catherine J. Crier
Judge Presiding

APPROVED AS TO FORM:

For Plaintiff Cedar Crest Heights No. 10
Declined to Sign
MICHAEL E. SMOLLER (After review) & no objection raised with the Court.

For Defendant City of Dallas

/s/ Sally Jo Field
SALLY JO FIELD,
Assistant City Attorney

18981I

ENDORSEMENT OF INSTRUMENT 84-14621-I
Cedar Crest Heights No. 10, Inc.

Vs.

City of Dallas
JUDGMENT
SIGNED AND ENTERED: April 3, 1987
RECORDED IN VOL. I108 Page 364
IN THE MINUTES OF THE 162ND JUDICIAL DISTRICT COURT OF DALLAS COUNTY, TEXAS